



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/543,121	07/22/2005	Gilbert Bouquet	62723A	4365
109 7590 05/30/2008 The Dow Chemical Company Intellectual Property Section P.O. Box 1967 Midland, MI 48641-1967				
EXAMINER ASINOVSKY, OLGA				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
05/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/543, 121

Applicant(s)

BOUQUET ET AL.

Examiner

OLGA ASINOVSKY

Art Unit

1796

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 24 April 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Randy Gulakowski/
Supervisory Patent Examiner, Art Unit 1796

Continuation of 11. does NOT place the application in condition for allowance because: The applicants' argument is that Priddy is silent to disclose claimed solution viscosity of from 5 to less than 50 cps., and the secondary reference to EP 0892820 also fails to disclose a solution viscosity in the claimed limitation. The applicants' Remarks filed on 04/24/2008 and the inventor's Affidavit under 37 CFR 1.132 filed on November 06, 2007 have been considered.

Priddy discloses mass polymerization process in the presence of solvent such as cyclohexane, column 7, line 34 and column 10, line 8 for producing functionalized polybutadiene. Thus, the solution polymerization is readable in the present claims. Priddy discloses volume average particle size of less than 0.1 micron, column 8, line 65. The weight average molecular weight (Mw) of the diene polymer chain is 20,000 to 300,000, column 6, lines 42-46. The property of the resulting product is transparent impact polystyrene, column 10, line 40. Priddy discloses a gloss property of the resulting resin. Although, Priddy does not mention about the specified limitation of a solution viscosity in the present claims, it would have been obvious to one of ordinary skill in the art to control a solution viscosity for obtaining the desired properties of obtained rubber in Priddy invention.

EP'820 discloses a process for preparing rubber modified polymer from vinyl aromatic monomers. EP'820 discloses a mass/solution polymerization polybutadiene in the presence of solvent. The volume average particle size is from 0.05 to 10 micrometers, page 4, line 55. The small rubber particles have 0.1 to 1 micrometer particle size limitation, page 5, lines 41-43. The size of the rubber particles are depending upon the desired gloss and impact properties of the polymer product, page 5, line 41. For product which requires high gloss properties, the amount of small particles is from 85 to 98%, page 5, line 15. Small rubber particles impart high gloss property of the obtained product.

Referring to the Declaration/Effidavit under 37 CFR 1.132, the inventor presents a correlation between molecular weight (Mw) and solution viscosity for butadiene rubbers, page 2, wherein the rubbers used in the Examples of the present application 10/543,121 have molecular weights that overlapped in the range limitation of the molecular weight of rubber in Priddy invention. Thus, it is obvious to one of ordinary skill in the art to control the process condition in Priddy invention for obtaining claimed solution viscosity, since average Mw of rubber in Priddy invention is overlapping the Mw of the rubber in the present examples, although there is no Mw of rubber in the present claims. Also, inventor presents data how the solution viscosity is depending on the molecular weight for obtaining the desired gloss property of an ABS, page 3. Thus, the desired property is a high gloss value of the resulting product. Inventor does not disclose the relation between a solution viscosity and particle size of the rubber particle.

Priddy and EP'820 disclose analogous process for producing high gloss rubber modified polystyrene, wherein small rubber particles impart high gloss property of the obtained product. This is other evidence that the analogous product having analogous property such as a high gloss property has analogous solution viscosity, whether or not this property is shown or suggested in the prior art.

There is no amendment after final office action. The rejection of record has not been withdrawn.